

Introductory Remarks on Effective Regulation by Commissioner Mark Ferron at the CPUC Thought Leaders Series, November 14, 2013

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Good afternoon,

First off, I'd like to thank the Policy and Planning Division for coordinating this event and I am honored that they have asked me to be here today to introduce the festivities.

I wanted to start by sharing a few personal thoughts on the subject of Effective Regulation. I approach this issue from a couple of different perspectives. My current standpoint, of course, is as a regulator with responsibilities across a number of industries – energy, water, communications, transportation – each of which has a different set of market dynamics, institutional structures and challenges, and different degrees of federal, state and even local regulation.

But I also have the perspective of having been “regulated”: I spent the first 25 years of my career in banking and finance, an industry with a very complex patchwork of domestic and international regulators – an industry which, in the light of the Financial Crisis, was arguably not regulated effectively. Over the last 2-1/2 to 3 years, I have tried to translate that experience into my role as a Commissioner.

I hate it when a speech begins with a dictionary definition, but I couldn't help myself. Since I don't think we even have a Dictionary at home any more, I used Google, where “effective” is defined as “successful in producing a desired or intended result.” So it makes sense to begin a discussion of Effective Regulation with a description of our “desired or intended result” or, in other words, our mission.

I happen to like the mission statement of the CPUC, or at least the version that greets visitors to our website: “The California Public Utilities Commission serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy.”

In short, I see our mission as balancing four key goals: Safety, Reliability, Affordability and Sustainability. So, given these “intended or desired results,” what are the “essential” elements of effective regulation?

I have come up with eight key attributes. There is undoubtedly some overlap among these, but for the sake of completeness, I'll list them all. To me, in rough order of increasing importance, Effective Regulation should be

1. Clear

2. Collaborative
3. Practical
4. Consistent
5. Adaptable
6. Efficient
7. Fair
8. Ethical

What I'd like to do is describe briefly what I mean by each attribute and how I think about each of these in my role as a regulator.

1. Clarity. We live in a complicated world, and our rules and regulations are often by necessity complex. But we must seek to reduce complexities and insert clarity wherever possible. Often, our role at the CPUC in implementing legislation handed to us by the Legislature involves using our stakeholder process to remove the ambiguities that tend to creep in through the political process. I am often surprised by how risk averse the utilities we regulate can be, until I recognize that perhaps we as regulators need to communicate more clearly our expectations and our rationale for decisions.

2. Collaboration. The issues we face are enormous and multifaceted and finding solutions requires a high degree of collaboration across many different groups and disciplines. We do very critical work, and yet we have extremely limited resources. We will never be able to walk every mile of pipeline or inspect every pole or strand of wire, but we still must ensure safe service. To do so requires cooperation and collaboration within this Commission, across our sister agencies, and - yes - collaboration with the firms that we regulate and other stakeholders.

3. Practicality. I think that effective regulation requires more than just presiding over a case, but rather being actively engaged in the issues. In my experience as the Chief Operating Officer of a very large bank operating across several different regulatory regimes, I found the "best" regulators were those who took the time to understand the problems and market dynamics facing the firms they regulate, rather than those who merely focused on formal proceedings and regulatory rulebooks. Effective regulation cannot be driven completely by lawyers (which is good since I am not one) and must avoid political dogma. It is not a check-the-box exercise.

Another important attribute of practical regulation is timeliness, a concern that I hear often and loudly from stakeholders. We have an obligation to resolve issues in a timely fashion while maintaining an appropriate level of regulatory scrutiny and oversight. So, we must always be on the lookout for ways to work smarter and streamline our processes including, in particular, increased use of technology.

4. Consistency. I believe one key to being an effective regulator is to address our challenges in a consistent and predictable fashion. At the end of the day, we are making decisions concerning assets that have useful lives measured in decades (or even half-centuries) and consistency is critical to attracting the investment capital necessary to maintain and improve our infrastructure. Given all the other uncertainties in the world, we strive for a consistent regulatory environment in order to promote innovation, investment and competition.

5. Adaptability. I often talk with staff about the concept of Kaizen, or the Japanese business philosophy of continuous improvement of working practices, personal efficiency, etc. This is a core philosophy of how I have run my office, but I think that it translates more broadly into being an effective regulator. As Commissioners, we make the best decisions we can with imperfect information. While it is important to address issues promptly, it is just as important to periodically look back and ask, “how could I have done this better?” While consistency is very important, we must also recognize that the regulatory framework needs to respond to changes in the industry and as new technologies and new risks emerge.

6. Efficiency, also known as Value for money. A decision should promote economic efficiency, and try to deliver the maximum bang for the buck. But we should not be driven by cost alone. We need to avoid the risk of higher costs in the future that may arise if we keep current expenditures too low and defer investment costs, and we must not overlook intangible benefits -- like safety -- because we are striving for the lowest possible price.

I also think that Efficiency is closely tied with innovation, competition and choice. Effective regulations are not designed to protect entrenched interests, but rather, to allow for more competition and more innovation. As a general principle, regulation should allow consumers more choice now and in the future.

7. Fairness. Effective Regulation needs to be fair and balanced (and I don't mean like Fox News).

More often than not, we have an enormous set of stakeholders affected by our regulations. We need to strive for balance between the interests of residential consumers, commercial and industrial sectors, regional and local governments, independent power producers, vendors, utility management and utility staff (which often have different perspectives), other state agencies and regulatory bodies, external investors, environmental groups, and so on.

Effective regulation seeks to ensure that all affected parties' interests are taken into account, even when (and perhaps especially when) they may not have a voice in the proceeding. We should look for an option that best serves the community as a whole,

not just some members based on their economic power or the strength of their public relations campaign.

8. Finally, Ethics. This is perhaps the most overlooked, but in my opinion, most important attribute of effective regulation, and goes well beyond the refusal to tolerate lying, cheating or stealing.

I recall when I made my very first presentation to Commission staff, I was asked about what I was going to do about “regulatory capture.” At the time, I was so new to this that I struggled to understand what the questioner was asking about. But I have quickly learned just how critical the ethical dimension is to Effective Regulation.

I believe very strongly that ethics begins and ends with personal responsibility. Often, bad news does not travel up easily through the ranks of an organization. Consequently, senior executives must model publicly the behavior of transparency and personal responsibility for all of their employees and the general public.

We all know that our regulatory framework is a result of a multitude of actions by legislators and regulators past and present and any one of our decisions is the result of the collective activity of many staff, judges and commissioners. However, as a regulator, when I put my name on a decision or when I cast a vote, I believe that the people of California deserve to know that I stand behind that decision and that I take personal responsibility for my actions.

This should be true for our regulated utilities as well. Having spent many years in executive committees and in corporate boardrooms, I know that corporate decisions are likewise the result of a collective process involving input from marketing and product specialists, engineers, lawyers and others. But, in the end, someone at the top is paid the proverbial big bucks to make a decision, and I believe that the senior executives at our regulated utilities need to be held accountable for their actions.

On the subject of “capture,” we regulators need to understand the industries that we regulate in great detail, but we must preserve a strong degree of separation, independence and transparency in the relationship between regulators and the regulated. We rely on the trust of the public and their elected officials, so when our core ethical standards are questioned, our regulatory effectiveness is compromised. We must hold ourselves as regulators and those firms that we regulate to the highest possible ethical standards. And we must go beyond the letter of the law: Effective Regulation demands avoiding even the appearance of impropriety.

Since becoming a Commissioner, I have always tried to be even-handed and transparent in my relationships with all parties and to take full responsibility for my decisions and actions.

In concluding, I believe the key to being an effective regulator is to address our challenges in a fair, consistent and ethical fashion. I believe that the role of this Commission is to focus and shape the powerful forces of innovation and fair competition towards advancing the common good: namely, the provision of safe, affordable, reliable and sustainable utility services for all Californians. Our actions must continue to support enterprise and attract investment capital, but we must also ensure the protection of consumers and our environment from abuse and excess.

Thank you all very much for letting me share some of my thoughts, and I look forward to the rest of the day.